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90-1418

Supreme Court, U.S.
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No. _____

Docket No. 90-_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

DAVID E. PHILLIPPE, Petitioner

vs.

JAMES G. KALLINS, et al., Respondent

PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

David E. Phillippe
22048 Sherman Way, Suite 301
Canoga Park, CA 91303
(818) 348-4885
Petitioner, in propria persona
(c) 1991

February 11, 1991

QUESTIONS PRESENTED

1. Is theft of an individual's traditional ownership right to "Exclusive Proprietary Intellectual Property", "Creative Personality" and "Free Expression" repugnant to the U.S. Constitution, First Amendment Rights of a California licensed real estate broker?

2. Is defacto denial of equitable estoppel to one group of citizens a denial of equal protection of the law of the California Constitution, Section 7(b) and to the United States Constitution, Fourteenth Amendment and 42 U.S.C.A. #1981, Equal Rights under the Law, #1982, #1983 and #1985?

3. Is the Court's "Public Policy License to Steal" creative expression, to allow deceit and fraud against the licensee, an impairment of the right to contract under the Constitution of California, Section 9 and under the United States Constitution, Article 1, Section 10, Clause 1, Impairment of Contracts, or Law Impairing the Obligation of Contracts?

4. Is uniformity of decision and application of law vital to integrity of law?

5. As a consequence of the California Supreme Court's "Public Policy License to Steal" the handiwork of licensee, is the victim defacto economically enslaved as a judicially designated subclassification of being by the abuser? Is such resulting consequence repugnant to the California Constitution, Section 6 and to the Thirteenth Amendment to the United States Constitution?

6. Is California Civil Code Section 1624(d) as understood and applied by the court below, repugnant to the afore-cited sections of the U.S. Constitution and hence unconstitutional? Should 28 U.S.C. Sec. 2403(b) be applied?

7 Should the "Police Power" vested in the Court to protect the public be reconstrued as the "Police State" to debilitate the economic life and livelihood of a designated subclass group of persons? Should a person so enslaved by judicial interpretation be denied right to trial? Should lower court interpretation take jurisdiction and precedence over U.S. Constitutional law to diminish inherent and unalienable civil rights and responsibilities?

8. Shall an offended party be entitled to an adjustment of the amount of an award to compensate for the depreciation of the national buying power of the dollar due to inflation by a factor equal to the difference in the Consumer Price Index (CPI) from the date of the offense to the date of payment? (See petition for writ of certiorari in Phillippe v. Shapell Industries, Inc.) Exhibit 5

9. Shall the Court use its discretion to state, "The Essence of Democracy: The Rule of Law and Code of Conduct Between Human Beings" for the uplift and strengthening of the moral and ethical fiber of the nation? Or, should the high court seek to erase as a basis for interpersonal behavior in America's failed society the ancient admonition, "Thou Shalt Not Steal"? See Exhibit 5

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Phillippe v. Shapell Industries, Inc., in the Supreme Court of the United States (1987) No-A-559, Docket No. 87-6598, Petition for Writ of Certiorari. (Attached hereto and made a part hereof as if here fully restated as to cases, law and commentary.) — EXHIBIT 5

In the Supreme Court of the State of California in Phillippe v. Shapell Industries, Inc. (1987) 43 Cal.3d 1247, the brief of Amicus Curiae filed by the California Association of Realtors, December 5, 1985. — EXHIBIT 6

"Justice in Distress", Los Angeles Times," A Seven-Part Series, December 16 through December 22, 1990 — EXHIBIT 7

"U.S. Incarceration Rate Highest In World" Wall Street Journal, January 7, 1991 EXHIBIT 8

#4201 Ethics of American Youth: A Warning And Call for Action (1990), Josephson Institute of Ethics, 301 Washington Blvd., Suite 104 Marina Del Rey, California 90292 (213) 306-1868 EXHIBIT 9

Petition for Hearing in the Supreme Court of the State of California, October 5, 1990, With the Opinion of the Court of Appeal, Second Appellate District Court of Appeal, Second District, Division Two, 2nd Civil No. B 045795 EXHIBIT 10

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Opinion: Order Denying Review After Judgment by the Court of Appeal, Second Appellate District, Division Two, No. B 045795, S 017834, In the Supreme Court of the State of California, Filed November 14, 1990 APPENDIX A

Opinion: In the Court of Appeal of the State of California, Second Appellate District, Division Two, B 045795, (Superior Court No. C 518961) Filed August 30, 1990 APPENDIX B

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

DAVID E. PHILLIPPE,

Petitioner

vs.

JAMES G. KALLINS, an individual; VIRGINIA KALLINS, an individual; JAMES G. KALLINS, as Trustee of the KALLINS FAMILY TRUST; VIRGINIA KALLINS, as Trustee of the KALLINS FAMILY TRUST; BARBARA A. KALLINS; GEORGE J. KALLINS, GEOVEST CORPORATION, a California corporation; and DOES 1 through 20, inclusive,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA SECOND APPELLATE DISTRICT

The petitioner David E. Phillippe respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal California, Second Appellate District entered in the above-entitled proceeding on August 30, 1990.

OPINIONS BELOW

The opinion of the Supreme Court of California, Supra. Ct. No. B045795 S017834, November 14, 1990 appears as Appendix A. In the Petition for Hearing, filed October 5, 1990, U.S. Constitutional issues are first extensively raised and ignored by the court. Petition Denied.

The opinion of the Court of Appeal, Second Appellate District, Division Two, August 30, 1990 appears as Appendix B.

JURISDICTION

The Judgment of the Supreme Court of the State of California adverse to the petitioner, David E. Phillippe, was entered on November 14, 1990. This petition for certiorari has been filed in this Court within 90 days. This Court's jurisdiction is invoked under 28 U.S.C., Section 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section One of the First Amendment, United States Constitution, provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Section One of the Fourteenth Amendment, United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

> States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.A. #1981 Equal Rights Under The Law, #1982, #1983 and #1985.

U.S. Constitution, Article 1, Section 10, Clause 1 Impairment of Contract, or Law Impairing the Obligation of Contracts.

Section One of the Thirteenth Amendment, United States Constitution provides as follows:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

California Civil Code, Section 1589. Consent by acceptance of benefits.

California Civil Code, Section 3521.

Restatement (Second) of Contracts, 139

Uniform Commercial Code, Sections 2-207 and 2-305

California Civil Code, Section 1623. Statute of Frauds; enforcement of oral contract by reason of fraud.

California Civil Code, Section 1624(d).

Business and Professions Code, Section 10136

California Civil Code, Section 3509. Intent and effect of maxims.

California Civil Code, Section 3512. Change of purpose.

California Civil Code, Section 3517. Advantage of own wrong.

California Civil Code, Section 3519. Presumptive agency.

California Civil Code, Section 3520. Suffering from the act of another.

California Civil Code, Section 3523. Remedy for wrong.

California Civil Code, Section 3528. Form and substance.

California Civil Code, Section 3531. Impossibilities.

California Civil Code, Section 3542. Reasonableness.

California Civil Code, Section 3294(a)(b)(c). Exemplary damages;

Evidence Code, Section 623

California Civil Code, Section 1102

California Civil Code, Section 2924

California Civil Code, Section 2373

18 U.S.C., Sections 1961, 1962, 1964

42 U.S.C., Section #1994 + 18 U.S.C.A. #1581

28 U.S.C., Section 2403(b)

28 U.S.C., Section 1257(3). Jurisdiction.

LAW IN ANTIQUITY

The Bible

The Talmud

The Quran

English Common Law

The United Nations Charter

STATEMENT OF THE CASE

A. Facts:

On or about June 15, 1983, Dr. James G. Kallins, M.D. contacted David E. Phillippe, California licensed real estate broker #00324347, doing business as Management Trend Company, concerning a Los Angeles Times advertisement describing a hotel/office building/health club known as Essex House Hotel, Essex Center & Le Club Sportif in Lancaster, California. Kallins expressed interest and induced Phillippe to send him a com-

prehensive descriptive, financial and photographic package on the property. The package was sent with the stipulation that Kallins would sign a statement on the cover letter as follows: "Receipt acknowledged from Management Trend Company, Submitting broker." The copy of the letter was signed and returned, "James Kallins, M.D." Subsequently, Kallins stated that the property did not suit his purpose and declined to buy. However, he requested Phillippe to continue to submit other properties, preferably shopping centers.

On or about July 6, 1983, Phillippe submitted the Plaza Del Norte K-Mart Shopping Center, Calexico, California, with the same provision for acknowledgment. When the signed acknowledgment was not returned, Phillippe telephoned Dr. Kallins. Kallins stated he deferred to sign the acknowledgement because he said he was an "honorable man" buying for a group of doctors and lawyers. He stated he would never go around a broker to cheat him out of commissions. Phillippe's request for him to sign concerning each property submitted impugned his good name and reputation. So Phillippe, in the interest of good relations with a client, did not press the issue. Kallins did not like the Calexico location, but asked Phillippe to continue to send him properties for consideration to purchase.

On September 21, 1983, Phillippe submitted the Country Fair Plaza Shopping Center, Chino, California, and met with Dr. James G. and his wife Virginia Kallins over lunch at Spires Restaurant and subsequently that afternoon at the Kallins' medical office in Bellflower to make the presentation. This property seemed to come closer, but also did not fit Kallins' requirements.

On October 19, 1983, Phillippe telephoned Dr. Kallins at 12:26 p.m. stating that he had located Fremont Square Shopping Center, Oxnard, California, the subject property of this legal action and that the property had the good upside potential from value added rehab that the doctor had indicated he desired. Phillippe explained in the telephone conversation and subsequently that day by letter dated October 19, 1983, that unlike the other properties submitted, where the seller would pay Phillippe's commissions, this transaction was an Estate Sale and the estate wanted net bids. It would be the buyer's responsibility to commit to payment of Phillippe's 6% commission.

We quote from paragraph 3 of the October 19, 1983, letter, as follows:

> "This center is being sold as an Estate Sale and as such will be open to bids. After looking at the center, you can tell us if you want us to pursue a possible purchase for you. If so, we will ask you to send us a check in the amount of $50 to pay for a bid package. The minimum bid is $3,000,000 although the appraisal is for more. The estate will consider bids on terms with a substantial cash down payment. All bids are net to the estate. The buyer will pay a commission of 6% which is added to the bid price as the total package consideration. The winning bid as well as the brokerage agreement will then be submitted to the court for confirmation. The bid package will contain all pertinent data including income, expenses, lease data and title report."

Kallins subsequently acknowledged receipt of the letter to Phillippe in his return telephone call on October 27, 1983, discussed his acceptance of the terms of employment of the October 19, 1983, letter including payment of commissions and put his wife, Virginia, on the phone to receive instruction for making out the check for $50 together with a letter of authorization. These were received and entered into evidence in this case.

Upon receipt of the $50 check and authorization letter, Phillippe secured a bid package from the law office of Ferguson, Regnier & Paterson, Oxnard, California, for the benefit of Dr. Kallins and his buyers which turned out to be his grown children: two were lawyers and one a doctor. On November 6, 1983 at 1:30 p.m. Phillippe's log shows he met in Bellflower with Dr. James G. and Virginia Kallins to deliver the bid package together with a cover letter of intelligence/instruction concerning the property and a commission disbursement instruction agreement for confirmation and to serve as a demand upon the purchase escrow to disburse funds, in the event the Kallins' were successful bidders. At that meeting, Kallins stated he would sign the commission demand when he signed his bid forms.

On November 9, 1983, Kallins telephoned Phillippe and there was an extensive conference as to the value of the property and to develop a bidding strategy. Kallins made some suggestions, then asked Phillippe to use his knowledge of real estate to summarize a bid strategy which was done by letter mailed that afternoon.

Kallins subsequently refused to sign the escrow disbursement demand agreement authorizing disbursement of commissions or submit his bid through Phillippe.

The foregoing evidence and much more may be found and the court is directed to Deposition of David E. Phillippe, Friday, May 9, 1988, Long Beach, California. Reported by: Elizabeth Hadley, C.S.R. No. 1325. Since the courts below have denied Phillippe his right to trial to prove contract, or tort complaint of deceit or fraud, there is no trial transcript.

The services of Phillippe in this transaction created an obligation of Kallins' to pay a 6% commission on a winning bid price of $4,080,000. That amount of commissions is $244,800.

Having baited the broker and gleaned the "Exclusive Proprietary Intellectual Property" of Phillippe and stolen the "Creative Personality" and "Free Expression" of Phillippe to their benefit without Phillippe's consent, Kallins offered Phillippe $20,000, take it or leave it. Kallins had already hired his family attorney to act in Phillippe's stead to submit the bid and complete the transaction and paid his attorney $20,000. Thereafter, Kallins' denied any obligation to Phillippe.

Kallins' smart, experienced real estate investors who are doctors and lawyers, as a group, knew that by denying the existence of a written agreement, by denying that any agreement at all had been made, that by relying on and invoking the ambiguities of the Statute of Frauds, Section 1624(d) as a device for fraud, he and his well-educated family could rely on the courts to avoid their obligations, hold hostage the civil rights of broker, commit a swindle and the court would ratify, support, endorse and "Public Policy License" Kallins' use of Section 1624(d) to commit treachery, deceit and fraud, which is not fraud at all in the eyes of the court because "it is all the broker's fault"! In California it is much cheaper to cheat the broker than to pay the broker.

At no time did Kallins or any defendant allege that Phillippe had defrauded any member of the Kallins' family in the Fremont Square Shopping Center transaction. The only claim is that by virtue of Civil Code, Section 1624(d), the Kallins family is "Public Policy Licensed" and is entitled to bait the broker, set him up to steal his "Exclusive Proprietary Property" and handiwork created for the benefit of the Kallins family, then as a group take the benefit and defraud Phillippe out of his paycheck.

Of such is the interpretation and understanding of "justice", California jurisprudence style. If the client is out to swindle the broker, he will swindle the broker, now with the court's blessing.

At what point in the sequence of determining the course of justice does state "Police Power" intended to protect the public become "Police State" to deprive citizens of inherent civil rights granted under the U.S. Constitution? Petitioner submits that the courts of California have crossed the line. The record shows that California Civil Code, Section 1624(d) is not used as a protective device to avert fraud, but rather as an inducement to perpetuate fraud against innocent victims.

At what point does the high court surrender jurisdiction over inherent unalienable rights and responsibility to state court sponsored destruction?

B. Legal Proceedings.

On October 17, 1984, Phillippe filed suit against Dr. James G. Kallins, his family and their family trust and corporation in Los Angeles Superior Court.

A second amended complaint was filed, dated July 16, 1987, for cause of action as follows:

1. Breach of Contract.
2. Equitable Estoppel Against all Defendants.
3. Fraud.
4. Interference with Prospective Economic Advantage.
5. Conspiracy Against All Defendants.
6. Breach of Oral Contract.

7. Agreed Price for Services.

8. Agreed Price for Reasonable Value of Services.

9. Breach of Implied Covenant of Good Faith and Fair Dealing.

The Superior Court of California, in the court of the Honorable Loren Miller, Jr., Judge, granted summary judgment in favor of defendant.

On August 30, 1990, the Court of Appeal of the State of California, Second Appellate District, Division Two, filed a decision upholding the grant of summary judgment to defendants, including a denial of right to trial based upon tort cause of action not bound by the California Civil Code (Statute of Fraud), Section 1624(d).

On November 14, 1990, the California Supreme Court filed Order Denying Review After Judgment by the Court of Appeal, Second Appellate District, Division Two, No. B045795, S017834 in the Supreme Court of the State of California. Petition for Hearing filed October 5, 1990, appears as Exhibit 10.

United States Constitutional issues were amply raised in the Petition for Hearing which the court below declined to hear.

REASONS FOR GRANTING THE WRIT: INTRODUCTION

What writing is sufficient to satisfy the statute of fraud, California Civil Code, Section 1624(d) as it relates to licensed real estate licensees to collect compensation and maintain their livelihoods and absent such writing, does the court remove all access to legal remedy to the licensee including, but not limited to:

Right to trial,

Right to equal protection under the Constitution of California and the full body of civil law available for the protection of any other normal court acknowledged first class citizen or resident of the State of California,

Right to equal protection of the law of the Constitution of the United States of America and the United States Codes?

In short, absent a writing sufficient in the eyes of the court to satisfy 1624(d), does the court license swindlers, con-artists and white collar corrupt operator, racketeer types to bait the broker, take the benefit of his "Exclusive Proprietary Intellectual Property", his "Creative Personality" and his right to "Free Expression" to rip-off the broker/licensee? These are property rights in the State of California that belong to the performer. Does the court license theft? Will the court construe the law on an unequal business playing field to reduce the broker to peonage and slavery, 20th century style? Does the court single out the real estate professional as a sub-class non-citizen to whom equitable estoppel is categorically denied? If hearing is not granted in this court, the unreasoned and draconian standard proposed by the court below in Phillippe v. Shapell Industries, Inc. (1987) 43 Cal.3d 1247 will continue to de facto deny broker/licensees, as a class, the right to plead and prove deceit and fraud, permitting the use of the statute as a sword to perpetrate fraud on the broker/licensee, rather than to prevent consumer fraud, its apparent intended use. The judicial notion in the court interpretation of Section 1624(d) would condemn and sentence to loss of income before any accusation of wrong-doing of the broker, allegation of fraudulent conduct, or proof at trial. Does the law force upon brokers alone contracts of adhesion? The present bias against brokers and distortion of law perpetuates an impossible economic holocaust in Phillippe v. Kallins and in the industry generally. The practice is oppressive and diminishes the inherent unalienable civil rights of individuals. The policy is unconstitutional pursuant to the guarantees of the Constitution of California and of the Constitution of the United States of America.

ARGUMENT

I.

THEFT OF AN INDIVIDUAL'S RIGHT TO "EXCLUSIVE PROPRIETARY INTELLECTUAL PROPERTY", "CREATIVE PERSONALITY" AND "FREE EXPRESSION" ARE REPUGNANT TO THE U.S. CONSTITUTION, FIRST AMENDMENT RIGHTS OF LICENSEES

A California licensed real estate broker/licensee has the right to own property of his creation, be protected by the laws of California against theft or use without consent of his property and has the right to free speech and free expression in negotiating the disposition of such property without fear of threat of court approved theft of his product. Appropriation of such common law right is a tort in California. Motschenbacher v. R. J. Reynolds Tobacco Co., 498 F.2d 821 (9th Cir. 1974). Property information or intelligence researched, gathered, assembled, created or dispensed to a prospective client by a licensee with the reasonable expectation of profit is the "Exclusive Proprietary Intellectual Property" of the creator. Such creations are the "Personality" and "Free Expression" of the licensee who created it in the normal course of trade or business. Any person who takes, uses, benefits or profits from licensee's handiwork or substitutes another to appropriate the handiwork is guilty of stealing the personality and free expression of licensee. These civil rights are inherent and unalienable to the individual. Any person taking such personal property infringes upon the U.S. Constitution, First Amendment rights of licensee. Buyers or Sellers of properties who take the benefit and refuse to pay the compensation have appropriated that which is not theirs to take. Bette Midler v. Ford Motor Company, 849 F.2d 460 (9th Cir. 1988). Dr. James G. Kallins and his family, by substituting their hired family attorney, stole the handiwork and free expression of David E. Phillippe and took what was not theirs to take to exploit for profit and to produce results as if Phillippe had been allowed to perform to completion of the transaction, in the same manner that Ford Motor Company through its advertising agency pirated that which belonged to Bette Midler.

Where the California State Courts sanction as "Public Policy License" unscrupulous operators to take the benefit of what is not theirs, to take and single out the real estate professional to deny the broker right of equitable estoppel remedy as in Phillippe v. Shapell, supra, (1987) 43 Cal.3d 1274 and as in the case at bar, brokers remain the abused in society and deprived of their First Amendment rights under the United States Constitution. Why does the court protect only those who rob and victimize the real estate licensee during the normal course and conduct of his business and legal endeavor while denying remedy to the broker?

The conduct of the court promotes theft of an individual's right to "Exclusive Proprietary Intellectual Property", "Creative Personality" and "Free Expression" and is repugnant to the First Amendment Rights of the broker under the United States Constitution. In any unbiased state or jurisdiction outside California, Phillippe v. Kallins would be viewed as "unfair business practice". In any jurisdiction untainted by the historical discriminatory bias culminating in the majority opinion in Phillippe v. Shapell, supra, 43 Cal.3d 1247, Phillippe would have the right to trial under all causes of action stated. 42 USCA #1982, Property Rights of Citizens.[1]

II.

DE FACTO DENIAL OF EQUITABLE ESTOPPEL TO ONE GROUP OF CITIZENS IS DENIAL OF EQUAL PROTECTION OF THE LAW AND IS REPUGNANT TO THE CALIFORNIA CONSTITUTION, SECTION 7(b) AND TO THE UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT, SECTION ONE.

The State Supreme Court continues a history and pattern of bias and discrimination against the licensed real estate broker to apply unequal application of law to destroy the ability of the

---

1 42 USCA #1982 All citizens of the United States have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. (Emphasis added.)

broker to earn a living while pursuing the normal and customary course of conduct of his trade and business.[2] [3] [4] [5] By citing these well-reasoned commentaries, the Supreme Court is invited to review the issues and concerns raised therein, to wit: (1) the unfairness of discriminating against brokers, who alone would be denied the right to plead and prove an equitable estoppel, and (2) the continued soundness of the rationale for such discrimination in the light of today's extensive public regulation of brokers and the current business context in which brokers such as Phillippe are truly victims of predators of society who act as principals in the purchase of properties.

The American free enterprise system flourishes and prospers where it is built upon the judicially supported concept of mutual good faith and fair dealing.

Buyers or sellers have equal responsibility of fair dealing of the broker in real estate transactions. We find no act of the legislature passed into law which condones or licenses an unequal playing field from which to contract and conduct business. The buyer in this case (Kallins) has no right to intentionally set up the broker to take the benefit of broker's knowledge and handiwork, his stock in trade, and then deprive the broker of compensation and livelihood. California Civil Code, Section 3517, Advantage of own wrong. "No one can take advantage of his own wrong." We find no act of the legislature passed into law which licenses one class of people in society to rob another class of people in society of intellectual property or of

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[2] Miller & Starr, Current Law of California Real Estate (1975) #1:54, P. 72, fn. 8.

[3] "Oral Employment Contracts and Equitable Estoppel: the Real Estate Broker as Victim" (1975), 26 Hastings L.J. 1503. EXHIBIT 4

[4] Petitioner attaches to this Petition for Hearing, as if here restated, a comprehensive argument and commentary in Phillippe v. Shapell Industries, Inc., supra, 43 Cal.3d 1247, made in the Supreme Court of the United States, October term 1987, No-A-559, Docket No. 87-6598, Petition for a Writ of Certiorari to the Supreme Court of California. EXHIBIT 5

[5] In the Supreme Court of the State of California in Phillippe v. Shapell Industries, Inc. (1987) 43 Cal.3d 1247, the brief of amicus curiae, brief of California Association of Realtors, December 5, 1985. EXHIBIT 6

pay to be derived therefrom. Only in the California Courts is such an unjust notion condoned, promoted as "Public Policy" and licensed to subjugate one professional group licensed to do business in California.

The courts should not construe a narrow interpretation of the law to deprive the commercial broker of his livelihood in the normal course of his business. California Civil Code, Section 3542. Reasonableness. "Interpretation must be reasonable." The court should seek to balance the mutual responsibility of a buyer or seller with that of the broker/licensee in any transaction. The full body of law which would otherwise protect a broker seems to have been abandoned by the court in its rush to reward deceitful swindlers under some voodoo law or superstition. The court invites anarchy!

When invoking 1624(d) to commit fraud, to the exclusion of the broad body of protective law applicable to all citizens, the court reduces the rights of the licensee to sub-human and the behavior is repugnant to the California Constitution, Section 7(b).

In Phillippe v. Shapell, supra, 43 Cal.3d 1247, the honorable and learned Justice Markus Kaufman seems to have had a better grasp of the issues of justice as he writes in the dissenting opinion:

> It is difficult to conceive a more suitable occasion for the assertion of equitable estoppel. Clearly, both tests of estoppel, unconscionable injury and unjust enrichment, are present. The principal, Shapell, initiated the contact with Phillippe and not only induced reliance but continually monitored and encouraged his performance. Furthermore, Shapell reaffirmed its original commitment to the general oral agreement, first in writing (in connection with the Filiorum deal), then orally (in conjunction with the Great Lakes property) and finally through the silent acquiescence as Phillippe labored and periodically sought confirmation of the oral misunderstanding. Under the circumstances, a failure to enforce the contract would clearly result in unconscionable injury.
>
> It is true that Phillippe, as a licensed broker, must be presumed to have been aware of the requirement of a written contract. As we recognize in Asdourian, however, such presumed knowledge merits far less con-

sideration when the principal, as here, is not only as sophisticated as the broker, but exercises even greater economic leverage. In this factual context, enforcement of the oral contract does not impair the policy of the statute. (Asdourian v. Araj, supra, 38 Cal.3d at pp. 292-294.)

Moreover, it is clear that Phillippe fully performed according to the oral agreement, and that Shapell richly profited from that performance. Under the circumstances, if Shapell is allowed to retain the benefits of Phillippe's performance without paying the agreed upon commission, Shapell will be unjustly enriched. (Monarco v. Lo Greco, supra, 35 Cal.3d at pp. 623-624: Asdourian v. Araj, supra, 38 Cal.3d at p. 293.) Accordingly, I would affirm the judgment."

That the court failed to heed the wisdom of Justice Markus Kaufman gives rise to the injustice of Phillippe v. Kallins and a more intense and insistent cry for justice from licensees who suffer silently in every community in California. This court will do well to now take seriously the arguments of Justice Kaufman as it impacts the real estate professionals. Denial of equitable estoppel to a real estate licensee, singled out for this abuse, is denial of justice and is repugnant to the United States Constitution, Fourteenth Amendment, Section One and to 42 U.S.C.A. #1981 Equal Rights Under the Law.[6] 42 USCA #1988, Civil Actions for Deprivation of Rights.[7] 42 USCA #1985, Conspiracy to Interfere with Civil Rights.[8]

[6] 42 USCA #1981, Equal Rights Under the Law. "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exaction of every kind, and to no other."

[7] 42 USCA #1983, Civil Action for Deprivation of Rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party

III.

THE COURT'S "PUBLIC POLICY LICENSE" TO ALLOW THE DEFRAUDING OF LICENSEES, IMPAIRS THE RIGHT TO CONTRACT AND IS REPUGNANT TO THE CONSTITUTION OF CALIFORNIA, SECTION 9, AND TO THE UNITED STATES CONSTITUTION, ARTICLE 1, SECTION 10, CLAUSE 1, IMPAIRMENT OF CONTRACTS, OR LAW IMPAIRING THE OBLIGATION OF CONTRACTS

How long must a real estate licensee treat all potential clients with fear and suspicion as a possible white-collar thief with full knowledge of the law that he can unilaterally swindle if the licensee risks an exposure of confidential and valuable property information, a necessary procedure in order to sell property and earn a living? If a broker sets out to create a transaction on a property which may not even be on the market for sale at the time, if he is successful in bringing a buyer and seller together, either or both can deny liability for compensation during the long, step-by-step course of negotiations on 100 or more points of the deal, the question of commissions being only one point of agreement, and can cut him out from payment without fear of reprisal of equal protection from the courts. And yet, generating sales is a perfectly normal activity, in commerce and of the commercial real estate brokerage business. How long must the real estate broker endure strained and convoluted reasoning and abusive decisions of the court to perpetuate a historic bias and discrimination of the court? Consider:

California Civil Code, Section 1589. Consent by acceptance of benefits.

> Assumption of obligation by acceptance of benefits. A voluntary acceptance of the benefit of a transaction is equivalent to consent to all the obligations arising from

injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

[8] 42 USCA #1985, (3), Conspiracy to Interfere with Civil Rights, Depriving Persons of Rights or Privileges, et. seq.

it, so far as the facts are known, to the person accepting." (Enacted 1872)

California Civil Code, Section 3521.

He who takes the benefit must bear the burden. (Enacted 1872)

Restatement (Second) of Contracts, 139, which provides as follows:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided by enforcement of the promise.

Uniform Commercial Code, Sections 2-207 and 2-305 (where persons have been held to be bound by promises where the terms of the promise are not at the time known or which depend on the settling of the terms by one of the parties in good faith.)

California Civil Code, Section 1623. Statute of Frauds: enforcement of oral contract by reason of fraud.

Contract not in writing through fraud, may be enforced against fraudulent party. Where a contract, which is required to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

California Civil Code, Section 1624(d), which reads in pertinent part:

The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent . . . (d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate . . . or to procure, induce or find purchaser or

> seller of real estate . . . for compensation of a commission.

Business and Professions Code, Section 10136, which provides as follows:

> No person engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any acts mentioned in this article without alleging and proving that he was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

California Civil Code, Section 3509, Intent and effect of maxims.

> The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application. (Enacted 1872)

California Civil Code, Section 3512. Change of purpose.

> One must not change his purpose to the injury of another. (Enacted 1872)

California Civil Code, Section 3517. Advantage of own wrong.

> No one can take advantage of his own wrong. (Enacted 1872)

California Civil Code, Section 3519. Presumptive agency.

> He who can and does not forbid that which is done on his behalf, is deemed to have bidden it. (Enacted 1872)

California Civil Code, Section 3520. Suffering from the act of another.

> No one should suffer by the act of another. (Enacted 1872)

California Civil Code, Section 3523. Remedy for wrong.

For every wrong there is a remedy. (Enacted 1872)

California Civil Code, Section 3528. Form and substance.

The law respects the form less than substance. (Enacted 1872)

California Civil Code, Section 3531. Impossibilities.

The law never requires impossibilities. (Enacted 1872)

California Civil Code, Section 3542. Reasonableness.

Interpretation must be reasonable. (Enacted 1872)

California Civil Code, Section 3294(a)(b)(c). Exemplary damages; when allowable; definitions.

(a) In an action for the breach of an obligation not arising from a contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud or malice must be on the part of an officer, director or managing agent of the corporation.

(c) As used in this section, the following definitions apply:

(1) "Malice" means conduct which is intended by the defendant to cause in-

jury to the plaintiff or conduct which is carried on by the defendant with a conscious disregard of the rights or safety of others.

(2) "Oppression" means subjecting a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

Evidence Code, Section 623, which reads in part:

Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing is true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.

California Civil Code, Section 1102

California Civil Code, Section 2924

California Civil Code, Section 2373

Does the court read these laws, some enacted in 1872, predating 1624(d), but add the phrase after each, "except as to licensed California Real Estate Brokers or Agents who may be freely harmed, abused, deceived and defrauded by any Nathan or James on the street with the full blessing, support and "Public Policy License" of the Supreme Court of the State of California"? Do not these statutes hold equal status as remedies for the real estate broker? Does the Court deny the licensed real estate broker all access to remedy under the foregoing law and codes in their haste to punish the broker for unalleged and untried fraud. For instance, does not Restatement (Second) of Contracts, 139 or California Civil Code 1623 stand

with equal stature and force of law as a remedy for the broker? Does the court force upon licensed real estate brokers alone contracts of adhesion and fear as a condition of employment in the normal course and conduct of trade and business? The court itself impairs the right to contract and the practice is repugnant to the Constitution of California, Section 9, and 42 U.S.C.A. #1981, Equal Rights Under the Law, and #1982.

With a litany of similar questions, the legislature of the State of New York was faced with the necessity to enact the following legislation into law,

> "General Obligation Law, 5-701. Agreements required to be in writing. Paragraph 10. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing or any real estate or interest therein, or of a business, its good will, inventory, fixtures or an interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. "Negotiating" includes procuring an introduction to a party to the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman." (emphasis added)

The State of New York came to the realization that the consumer need not be protected under the statute of frauds where they are already duly protected from fraud of a real estate licensee through the extensive licensing process imposed by the police powers of the state.

Given the corrupting consequences on society and abuses of Section 1624(d) invited from the consumer upon the licensees of the State of California, in the interest of justice the court should remove the source of injustice and abuse and declare that California Civil Code, Section 1624(d) is unconstitutional and contrary to public decency. In California, Section 1624(d) has been applied as a sword to destroy the life and livelihood of the broker. The time has come to discontinue the biased

and discriminatory "charade of justice" and debilitating consequences on a society.

The Court's bizarre "Public Policy License" and abuse of California Civil Code, Section 1624(d) is indeed repugnant to the United States Constitution, Article 1, Section 10, Clause I, Impairment of Contracts, or Law Impairing the Obligation of Contracts and should be declared unconstitutional. Pursuant to 28 U.S.C. #451, the court below should certify to the California Attorney General that the constitutionality of CCC 162-1(d) is questioned. 28 U.S.C. #2403(b).

The present application of Section 1624(d) places the administration of "justice" entirely in the hands of the evil doer against the broker. The court abrogates its duty and is merely the silent enforcer of those who do evil. The courts of California thus become a farce, surrendering the full power and jurisdiction of legal authority to be used at the discretion of the greedy swindler to rob the real estate licensee. What happened to equal protection of the law? The depreciation of the court's jurisdiction is repugnant to the Constitution of California, Section 7(b) and to the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Clients know and are informed that the broker may spend many thousands of dollars of "at risk" capital out of his own pockets with payment contingent upon a successful effort to provide profit-making purchase opportunities to the client. The client who withholds earned income from the broker not only deprives him of his paycheck but may perpetrate a malicious fraud to destroy the broker's capital base. The decision for behavior is now in the hands of the client, not the courts.

Indeed, as stated by Robert Bork in his book, "The Tempting of America: The Political Seduction of the Law", he details how the traditional ideas of legal process and legal reasoning have been replaced by a demand that judges reach politically correct results . . . that all that counts is who wins and loses cases regardless of the legal issues. Selah!

The U.S. Constitution, Article 1, Section 10, Clause I, Impairment of Contracts, or Law Impairing the Obligation of Contracts, was enacted "to preserve sacred the principle of the inviolability of contracts against that legislative interference which the history of government has shown to be so imminent,

in view of the frequent engendering of popular prejudice and the consequent fluctuation of popular opinion." Edwards v. Williamson, 1881, 70 Ala. 145. "Obligation of contract is defined as the law or duty which binds the parties to perform their agreements and contract is impaired when a party is deprived of the benefit of his contract by law." Northwestern Nat. Life Ins. Co. v. Jordan, D.C. Nev. 1978, 447 F.Supp. 856. The judicial notions of the State Supreme Court and the Second Appellate District below promote the violation and impairment of contract. The decision stands in stark contrast to the more rational remedy handed down from other California Appellate districts.

IV.

UNIFORMITY OF DECISION IS VITAL TO INTEGRITY OF LAW

The court should consider facts and circumstances of Phillippe v. Kallins in comparison with the following recent case examples:

> MGW v. Fredericks, et al., G006654, In the Court of Appeal of the State of California, Fourth Appellate District, Division Three. April 30, 1990 (Unpublished). Plaintiff and Appellant was upheld in the award of $1,973,200 for interference with oral listing. (See Exhibit 1)
>
> Morrow v. Traweek, A027474, In the Court of Appeal of the State of California, First Appellate District, Division Five. February 3, 1986 (Unpublished). Plaintiff and Respondent was upheld and awarded $530,000 in compensatory damages plus prejudgment interest and $587,500 in punitive damages. The California Supreme Court refused to hear an appeal. (See Exhibit 2)

Ballou v. Master Properties No. 6, 189 Cal.App.3d 65 (1987) also serves to illustrate the need for uniformity of decision at bar. While the circumstances are similar, the results differ markedly from the case at bar or Phillippe v. Shapell, supra, 43 Cal.3d 1247. In Ballou, the Plaintiff was awarded

$138,000 in compensatory damages and $2,000,000 in punitive damages. An analysis of the foregoing cases will show a disparity in jurisprudence when compared to the case at bar. (See Exhibit 3)

As to the case at bar, Justice Roth should have recused himself from deliberations due to the "pride of authorship" in his stand-in participation in the decision of Phillippe v. Shapell, supra, 43 Cal.3d 1247. Roth seems to have tainted the appellate court with his continuing bias in the case at bar. Further, the court was influenced to deny Phillippe so much as a jury trial to settle tort issues not bound by Section 1624(d).

V.

THE STATE SUPREME COURT'S "PUBLIC POLICY LICENSE" TO ENSLAVE IS REPUGNANT TO THE CALIFORNIA CONSTITUTION, SECTION 6, AND TO THE THIRTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The State Supreme Court's bizarre "Public Policy License" nurtures a public attitude and response conducive to thieves, fraudulent principals and unscrupulous white-collar criminal types who avail themselves of the ill-conceived license to steal, prey upon and reduce the real estate licensee's economic condition in society to a condition of involuntary servitude . . . Slavery 20th Century Style, when imposed by judicial interpretation, is a more subtle and clever form of subjugation of the free spirit of mankind and destructive impairment in his legal pursuit of happiness and livelihood. This condition in society is repugnant to the Constitution of California, Section 6, to the Thirteenth Amendment to the United States Constitution, and to 42 U.S.C.A. #1981, Equal Rights Under the Law.

Real estate professionals are not an inconsequential number of citizens in California. According to the California Department of Real Estate, in January 1990, there were 299,012 persons who held licenses to deal in real estate. The deteriora-

tion of justice has served to impugn the humanity and integrity of 299,012 citizens under the law who all look to this court to restore their civil and human rights with equal dignity.

Striving for life and liberty becomes futile when laws enslave! Should state licensing serve to regulate professional proficiency or should licensing remove unalienable rights to enslave? The court may argue that if the broker does not like the system, he may quit his chosen profession. But should any citizen be forced to give up livelihood in a legal pursuit to preserve his personal liberty and freedom? This notion is inconsistent with the notion of freedom of choice and justice in the pursuit of happiness. Ergo the conclusion, the system has degenerated to diminish personal liberty.

Complex, convoluted and unintelligible laws and legal interpretations of laws enslave the spirit and destroy self-esteem of the population. The public cannot be expected to take seriously incomprehensible laws. American liberty is hopelessly entrapped in stagnation! Where is the leadership to ensure constructive change? Where is the court-inspired leadership to rebuild the foundations of moral and ethical quality of life? The California Court's historic pattern of judicial conspiracy to interfere with civil/economic rights to deprive licensee as an individual or as a class from exercising Constitutional rights is contrary to the Civil Rights Act of 1871. 42 USCA #1981, #1982, #1983 & #1985. The court intentionally subverts justice, is un-American and is liable to the abused person.

The broad purpose of the Thirteenth Amendment is to render effective a government under which liberty of the citizen may be protected. Crews v. Lundquist (1935) 197 N.E. 768, 361 Ill. 193.

VI.

THE PRECEDENCE OF LAW IN ANTIQUITY

"Thou shalt not steal!" The Bible, Exodus 20:15. This eighth commandment of the Biblical Ten Commandments is central to the law of Moses (the Talmud); Christian teaching; Islamic Law (the Quran); the Magna Charta and English Common

Law; Japanese tradition of personal honor and integrity; the Declaration of Independence; and habitual/traditional U.S. Constitutional law and culture, and the United Nations Charter as well as a basis of civilization globally.

Petitioner now comes to request the United States Supreme Court to interpret the law, "Thou Shalt Not Steal" and its validity in California Law and ethics as it applies to society throughout the United States. Are there any circumstances under which the United States Supreme Court sanctions and encourages a "Public Policy License to Steal"?

On the other hand, the high court could vote to ignore an issue central to the integrity of the United States Constitution. In Phillippe v. Shapell Industries, supra (1987) 43 Cal.3d 1247, with similar legal, moral and ethical questions raised as in the case at bar, the court voted not to hear the case. Perhaps petitioner's lawyer did an inadequate job of laying the Constitutional foundation for hearing. However, here in the instant case on this second try the foundation has been laid and U.S. Constitutional issues argued to permit the court to exercise its jurisdiction to deal with issues vital to law and order, peace and tranquility of our civilization to guide the future of the Republic. Either our nation will abandon notions of decency in a greedy, materialistic, capitalistic society, or we will embrace standards of moral and ethical quality of life and behavior central to survival in a profit-driven economic society.

The disintegration and collapse of American society from within can be traced in sequence from spiritual decay as the courts assume authority over ideals traditionally expressed through the church, to enforce its notions and precedences of evolved standards of acceptable human conduct. For instance, "Thou shalt not steal" and "Thou shalt not bear false witness" are simple, understandable concepts of intent by people throughout society with little training or education. Enforcement of these concepts emanates voluntarily from the inner spirit of people, when motivated through prayer to and reverence for their god. Prayer is understood as "a personal call for eternal energy for constructive human goal setting".

Spiritual intake is as normal a body function in the healthy individual as food or air intake. There is need for a national code of ethics in human conduct, a basis of all law, which is

taught in the schools and readily understood by any 6th grade student.

Where the court below superimposes its bizarre notions over and above the historic and traditional concept, "Thou shalt not steal", the intent of society becomes "what can we get away with" within the standards of the court? The concepts of "right and wrong" founded in antiquity become a moot point. Kallins' prayed the court to grant their fraud and the court dutifully complied to grant deceitful, fraudulent conduct resulting in theft.

The time has come to refocus deteriorated moral and ethical standards which have lead the republic to its present point of trauma and to consider the remedies which will lead the nation during the next 200 years.

The Court can express responsible opinion or abrogate its responsibility and indict itself in ignoring important issues. No amount of RICO law enforcement is sufficient to counter the emerging pattern of white collar attitude of "anything for a buck". Now the California court has interpreted law to "Public Policy License"; aid and abet thievery, swindlers, con-artists, deceivers, defrauders, white-collar criminals, abusers, racketeers and corrupters of humankind. (Stanley Mosk, Justice, excepted.) Should the high court, by omission or commission, ratify the license of this pattern of human behavior to the detriment of all citizens throughout the United States of America?

American economic justice seems skewered to punish the good and decent people who elect a life style to do good. The same pattern of "injustice" rewards those who skirt the fringes and ambiguities of law to prey upon ravage, pillage and victimize the public. Honesty may be a self-rewarding life-style, but the country is programmed so that deceit pays better. And so it is that America has self-destructed from within. The decent segment of the public has become an innocent hostage of the corrupt. Need petitioner remind the court of the greed and deceit rampant throughout all strata of society?

See "Justice In Distress", a seven-part series of articles of the Los Angeles Times, December 16 through December 22, 1990. The series illustrated the improbability that any citizen in the street could rely upon the present California justice system for protection under either civil or criminal law. EXHIBIT 7

See "U.S. Incarceration Rate Highest In World", The Wall Street Journal, January 7, 1990. EXHIBIT 8 How long must the nation be subjected to and endure sleaze justice.

When the court proposes notions of justice evolved contrary to laws of human conduct based and founded in antiquity, the outcome is predictable. "Justice in Distress" merely catalogues an accumulation of unconscionable judicial opinion which has brought America from the loft of "Pilgrim Pride" to its knees in infamy. Clearly, the judicial bureaucracy has failed the broad base of the public in all regards while under supervision of the California Supreme Court.

The eternal being required only four words to state the law, "Thou shalt not steal." The courts have usurped the authority of the eternal to substitute its notions of law and justice. The result, over the course of 200-plus years, is to produce tons upon tons of law book precedences which catalogue citations to demonstrate "who did what to whom" and how the court licensed them to get away with it. Phillippe v. Shapell Industries, Inc., supra, 43 Cal.3d 1247 serves as an example of case in point. In its rush to separate "church and state" the court has removed the cornerstone rules of decency from humanity as a legal expectation or requirement of human conduct or behavior. The court substitutes for a simple rule of behavior, "do unto others as you would have others do unto you" its mounds of legal precedence, which proposes "do it to others before they do it to you." And thus these "Gods of the Court" have substituted their accumulated notions of acceptable human behavior for simple, understandable, wholesome values founded in antiquity which have traditionally served to guide and motivate American society. The consequences have reduced society to a shambles.

Confidence of people in its government, its courts and its institutions has declined and eroded to near zero. How would the founding fathers of our Republic, and writers of the Constitution respond to the concepts of "Public Policy License to Steal" proposed by Malcolm M. Lucas and his cohorts? Would people of high ideals, integrity and lofty goals stoop to be beguiled by transparent nonsense?

The court is directed to re-read the first two paragraphs, in Congress, July 4, 1776; The Unanimous Declaration of the

Thirteen United States of America. The court should take judicial notice of the fact that under its guidance and tutelage, conditions today have degenerated to circumstances more serious than faced by our forefathers in 1776. Much of our youth is without guidance. Immigrants have come to our shores to "share the wealth", but may have failed to be taught the perspective "with civil rights comes individual responsibility" of performance to the highest and best interests of the community. The court itself would do well to restate the perspective of American heritage. All citizens should be re-energized with fresh hope and sense of responsible goals.[9]

Historically, American business has operated within the context of good faith and fair dealing. Truth, honesty and integrity between parties was expected and given without question by all parties to a transaction. Where a dispute developed, a balance of interests was considered. The California court would rewrite the traditional intent for moral and ethical values of responsible American business practice and substitute therefore the law of the jungle. It is no longer a "sin to tell a lie". It is a code of conduct approved by the court of last resort in California. It is no longer illegal to pirate another person's intellectual property. The court "Public Policy Licenses" the theft of created "Exclusive Proprietary Intellectual Property", "Creative Personality" and "Free Expression" at will.

The issues in Phillippe v. Kallins and in Phillippe v. Shapell Industries, Inc. are central to the future of commerce, human dignity and the quality of life itself in America. Will each citizen continue to have the right to pursue his individual talents to achieve personal economic goals and objectives, or will the courts continue to pander to the rich and powerful "bribe artists", covert as they may be, to destroy the dignity, property rights and self-esteem of working Americans? The California court prostrates itself as a source for human freedom and democracy as it plays to the pleasure of the financial establishment. The court freely deviates from rules of traditional values to support deceit and treachery. The concept of individual freedom to pursue livelihood disintegrates under the

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[9] #4201, Ethics of American Youth: A Warning and Call to Action (1990), Josephson Institute of Ethics. 301 Washington Blvd., Suite 104, Marina del Rey, CA 90292. (213) 306-1868. EXHIBIT 9

dangerous opinions of the court. The court has lost credibility as a reliable source for justice in the mind of the citizen in the street. American concepts of freedom have become an illusion and a cruel hoax when frittered away by frivolous judicial opinion motivated by baser priorities. Clearly, California has disgraced itself in history and in the court of world opinion as a bizarre source of equity or justice.

The decline and fall of the Roman Empire was generated from within . . . and so with the United States.

"When the people reach the point where they realize that the government cannot provide them safety, they're going to take that responsibility unto themselves." Sherman Block, Sheriff, Los Angeles County. Justice in Distress, Los Angeles Times, 12/22/90, Part 7 of a 7-part series. Where law becomes irrelevant, anarchy takes control.

The time has come to reconsider the priorities, to mirror the voluminous laws of our land against the simple truths of antiquity. "Thou Shalt Not Steal" is still the ethic of choice for responsible people.

CONCLUSIONS

For all of the foregoing reasons, arguments, law, precedences, commentators and laws of antiquity cited, Petitioner requests a hearing and an in-depth, totally comprehensive, objective and well-conceived, common sense adjudication of issues vital to the case at bar and to the 299,012 California real estate licensees and professionals who look to the courts for equal justice.

The broker should not be punished by the court as if guilty of fraud when no fraud was alleged or proven in a court of law. What ever happened to "innocent until proven guilty"? When the customer holds the decision as to whether or not he will sign an agreement to pay commissions, and it is most profitable to him to avoid signing, and thereby avoiding obligation of oral contract, the Statute of Fraud, Section 1624(d) serves only to punish the victim of fraud, and promote the interests of the deceivers and defrauders in society. Such a judgment demonstrates a crass and frivolous judicial disregard

of brokers' fundamental economic and inherent unalienable civil rights as a citizen of this nation.

The law should not be construed to interfere with reasonable livelihood endeavor or to restrain trade and commerce. The law should be used to balance the interests of contracting parties and protect all persons with an interest in trade and commerce, equally. Where a commercial broker of real estate seeks to meld the varying concerns and negotiate the 100+ deal-making points for the parties to the transaction, the court should not require a premature written agreement concerning compensation as a condition for payment to the broker for his services. It is enough that buyer and seller as well as broker acknowledge they all have an equal obligation and responsibility to reduce the issue point of compensation to writing as part of the step-by-step negotiation of 100+ points of the deal, and that he who refuses to negotiate in good faith and fair dealing bears the burden of rebuke, liability and damage consequences under the law. There needs to be a rational, understandable, common sense working definition announced to the public in the street -- a statement of the mutual responsibility of the parties to each other. Section 1624(d) needs to be rewritten to fit the circumstances to serve both to protect the interests of the consumer against fraud and the licensee to collect his just compensation with equal justice. The clause should truly serve as a shield and not as a sword in commercial transactions.

The point in history has arrived for the court to cut the nonsense and clearly define reasonable working relationships between consumers who deserve to be well served in commerce and real estate professionals who deserve to receive their paychecks without fear of loss of compensation for a job done in the normal course of commerce. Contrived definitions don't work. Court supported honesty should still be the law in California.

PHILLIPPE THEREFORE PETITIONS THE COURT TO:

Reverse Phillippe v. Shapell, supra, 43 Cal.3d 1247 and cleanse the law libraries of this blight and pollution, a distortion of the law of the nation and law in antiquity. Put all citizens on notice: "California Real Estate Licensees are no longer fair game to be victimized by the consumer."

To avoid deceit and fraud, declare California Civil Code, Section 1624(d) unconstitutional as presently applied and a law contrary to public decency as it invites abusive behavior and corrupting consequences in society. Equitable estoppel should be an available pleading to the real estate licensee.

Specify in detail what remedies are available in law and in equity to a licensed California real estate broker abused of his fundamental civil, economic and human rights. Include a discussion of recovery of every available form of damages such as compensatory, consequential, punitive, exemplary, emotional distress and suffering, interest on award including an adjustment for the depreciated buying power of the dollar as expressed by the U.S. Department of Labor, Consumer Price Index (CPI) on awards of the court from the date of damage, close of escrow, until the date of payment and award of attorneys' fees. Is a broker entitled to plead, prove and recover in a California state or federal court of law a pleading under 18 U.S.C. 1961, 1962, 1964 (RICO)?

Remand Phillippe v. Kallins to trial on all causes of action determined equitable by the court with leave to amend the complaint to conform to findings of the court.

Award of such additional equitable remedy as a resourceful court deems necessary and proper to restore the licensee to first class citizenship under the Constitution of California and the United States Constitution.

State an affirmation of the historic American concept, "Personal liberty and freedom with inherent unalienable rights with individual responsibility". The affirmation should emphasize the concept of honorable intent as the most satisfying form of reward in interpersonal endeavor and quality of life.

The time has come to give economic freedom and liberty to all people.

Dated: February 11, 1991

Respectfully submitted,

DAVID E. PHILLIPPE



In propria persona

APPENDICES

APPENDIX A

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Second Appellate District, Division Two, No B045795

S017834

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

DAVID E. PHILLIPPE, Appellant

v.

JAMES G. KALLINS Et Al., Respondents

Appellant's petition for review DENIED.

Mosk, J. is of the opinion the petition should be granted.

Lucas

Chief Justice

SUPREME COURT
FILED
NOV 14 1990
Robert Wandruff Clerk
DEPUTY

APPENDIX B

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DAVID E. PHILLIPPE,	)	B045795
	)	
Plaintiff and Appellant,	)	(Super. Ct. No. C 518961)
	)	
v.	)	
	)	
JAMES G. KALLINS, VIRGINIA KALLINS, BARBARA A. KALLINS, GEORGE J. KALLINS, KALLINS FAMILY TRUST, and GEOVEST CORPORATION,	)	
	)	
Defendants and Respondents.	)	

COURT OF APPEAL - SECOND DIST.
FILED
AUG 30 1990
ROBERT N. WILSON Clerk
Deputy Clerk

Appeal from a judgment of the Superior Court of Los Angeles County, Loren Miller, Jr., Judge. Affirmed.

Perez & McNabb and Richard L. Perez for Plaintiff and Appellant.

Konstantine P. George for Defendants and Respondents.

This is an action by a real estate broker against the buyers of an Oxnard shopping center. The broker claims the buyers agreed to pay him a six percent brokerage commission on their purchase. The broker had no formal written agreement,

however. The trial court granted the buyers motion for summary judgment based on the statute of frauds. The broker appeals. We affirm.

The issue is whether certain writings exchanged by the parties satisfy the special statute of frauds for claims of this type. Civil Code section 1624 provides: "The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent: . . . (d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate . . . or to procure, introduce, or find a purchaser or seller of real estate . . . for compensation or a commission."

The seller of the shopping center was a decedent's estate. The method of sale was solicitation of sealed bids, followed by an in-court overbidding procedure. The broker is David E. Phillippe, doing business as Management Trend Company of Calabasas Park. Phillippe did not represent the seller; Phillippe's claim against the buyers is based on his relationship with them.

The written communications between the parties consist of several letters sent by Phillippe, and one check with a covering letter sent by the defendants.

Phillippe's letters were addressed to defendants James G. Kallins and Virginia Kallins, who are husband and wife.

In a letter dated October 19, 1983, Phillippe wrote to Mr. Kallins, apparently following a telephone conversation. The first and third substantive paragraphs of this letter promoted the shopping center as an investment. In the second paragraph, Phillippe wrote: "This center is being sold as an Estate Sale and as such will be open to bids. After looking at the center, you can tell us if you want us to pursue a possible purchase for you. If so, we will ask you to send us a check in the amount of $50 to pay for a bid package. The minimum bid is $3,000,000 although the appraisal is for more. The estate will consider bids on terms with a substantial cash down payment.

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1. Title was taken by James and Virginia's three children and a family trust of which James and Virginia are trustees. All were named as defendants, as was Geovest Corporation.

All bids are net to the estate. The buyer will pay the broker a commission of 6% which is added to the bid price as the total purchase consideration. The winning bid as well as the brokerage agreement will then be submitted to the court for confirmation. The bid package will contain all pertinent data including income, expenses, lease data and a title report.

On October 27, 1983, Virginia Kallins wrote to

Phillippe, on the letterhead of Geovest Corporation, an entity affiliated with the Kallinses. This letter stated, in full: "As per your telephone conversation with Dr. James Kallins, enclosed please find a check in the amount of $50.00 to the firm of Ferguson Reguier and Patterson [attorneys for the estate] for the package on Fremont Square Shopping Center, Ventura Road at Doris Avenue, Oxnard, California. Your attention to the above matter will be appreciated." Enclosed with this letter was a $50 check drawn on an account of Geovest Corporation, payable to the estate's attorneys. This check was signed by Barbara Kallins, who is the daughter of James and Virginia Kallins. This check is dated September 27; the record does not make clear why.

On November 3, Phillippe wrote to James and Virginia Kallins, giving more information about the shopping center, and enclosing the bid package. This letter included the following instruction: "The bid opening is scheduled for 5 p.m. November 15, 1983. We would like to submit your bid no later than Monday, November 14, 1983, or sooner if possible. Make 4 copies of the Purchase and Sale Agreement and Escrow Instructions located in the front of the Bid Package, fill in your bid, sign and return this to me together with 4 copies of the signed commission agreement." Enclosed with this letter was a formal one page commission agreement prepared for the signatures of James and Virginia Kallins.

On November 9, Phillippe again wrote to the Kallinses, with advice on what to bid. This letter added, "It is our understanding *that the* commission agreement will be signed and submitted to us with the bids."

The Kallinses never signed the commission agreement. They did bid on the shopping center and eventually acquired it through the overbidding procedure. They did not, however, submit their bid through Phillippe, and they declined his subsequent demand for payment of a $245,000 commission.[1]

Phillippe claims that in a telephone conversation on October 19, Mr. Kallins "agreed to utilize my services in trying to buy the property at my stated commission of six percent." He further claims that in a telephone conversation on October 27, Mr. Kallins told him "that he agreed to my six percent commission." He also asserts that Mr. Kallins told him after receiving the formal commission agreement "that he would sign that document when some minor changes were made and that he would return it to me together with the completed bid package."

Kallins, on the other hand, asserts he never discussed Phillippe's commission until after he received the formal commission agreement in the mail, and then he told Phillippe he would not sign it and was surprised Phillippe had presented it to him. Kallins claims that at all times he considered a six percent commission under the circumstances to be "outrageous" and "inconceivable." Kallins further contends he never asked Phillippe to represent him, and to the contrary, he told Phillippe several times to stop sending him letters as they were not going to do business together on this transaction.

Though a dispute of fact is thus presented as to whether the parties reached an oral employment and commission agreement, this factual dispute is immaterial. Defendants having denied the existence of any agreement and having raised the statute of frauds as a defense, the only issue as to Phillippe's contract claims is whether defendants or their agent subscribed some note or memorandum of an agreement authorizing or employing Phillippe to purchase the shopping center for compensation or a commission.

To understand the legal principles involved, one need read only the leading case in this field, Phillippe v. Shapell Industries (1987) 43 Cal.3d 1247. There Phillippe lost a potential

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2. Phillippe v. Shapell Industries was a 5-2 decision, with Presiding Justice Roth participating and concurring in Justice Eagleson's opinion for the Court. Justices Kaufman and Brousard dissented, arguing the facts of the

$163,000 commission by not reducing his commission agreement to writing. The Supreme Court held that a note or memorandum is insufficient to satisfy the statute of frauds unless it unequivocally shows on its face the fact of employment of the broker. Phillippe's client in that case had signed only one writing, and it contained an agreement to employ him for a commission only in connection with a different property. In addition, the Court ruled, a licensed broker cannot enforce an oral agreement unsupported by a sufficient writing of a theory that the principal is, by its conduct, equitably estopped to rely on the statute of frauds, because a broker, who is required to know the law, can never reasonably rely on the enforceability of an unwritten agreement. Justice Eagleson's opinion for the Court is comprehensive, and it could not be improved by any effort we might make to quote, paraphrase, explain, or supplement it.

Here, as in Shapell, there was no writing signed by the client which, read either by itself or in conjunction with Phillippe's letters, shows the fact of Phillippe's employment. This is clear from examining Phillippe's October 19 letter to Mr. Kallins and the October 27 covering letter and check. These writings are attached to this opinion as an Appendix.

The cases finding sufficient a writing that was not a formal commission agreement are distinguishable. In all of them the writing signed by the principal was far more specific than in the case at bench. (See Rader Co. v. Stone (1986) 178 Cal.App.3d 10, 2125 (principal distributed to realtors a brochure offering his property for lease and specifying the commission to be paid, and also signed a lease providing that lessor was responsible for broker's commission); Seck v. Foulks (1972) 25 Cal.App.3d 556, 562 (offer to sell property on specified terms with a six percent commission written on back of broker's business card and initialed and dated by seller); Barcelon v. Cortese (1968) 263 Cal.App.2d 517 (buyer sent letter stating, "Mr. Joe Parker [manager of broker's appraisal department] will represent us solely and exclusively in the San Francisco area on land purchases"); Spitler v. Avery (1961) 189 Cal.App.2d 811 (seller gave broker an express written instruction to go ahead with a proposal that had been described in a previous exchange of correspondence and provided for a commission); Davinroy v.

* Assigned by the Chairperson of the Judicial Council.

Thompson (1959) 169 Cal.App.2d 63 (in the contract of sale the principals identified the brokers involved in the transaction); Bruner v. vans Markets (1951) 103 Cal.App.2d 135 (principal wrote broker a letter stating what he wanted done and asking broker to do it).)

Instead, this case falls in line with another group of cases finding writings to be insufficient. (Phillippe v. Shapell Industries, Supra, 43 Cal.3d 1247 (sole writing signed by alleged principal related to a different property); Franklin v. Hansen (1963) 59 Cal.2d 570) (writing signed by principal is insufficient where it states the terms and conditions on which principal is willing to negotiate for the property but makes reference neither to employment of the broker nor to a commission); Pac. etc. Dev. Corp. v. Western Pac. R.R. Co. (1956) 47 Ca1.2d 62 (same).)

It is thus unnecessary to consider whether Virginia Kallins or Barbara Kallins or Geovest Corporation had the requisite written authority to bind the other defendants to a brokerage agreement. (See Civ. Code, 2309.) We note merely that the uncertain agency of those whose names appeared on the check and covering letter further precludes a finding that these writings manifested or memorialized an acceptance of Phillippe's proposal that James and Virginia employ him for a commission.

Likewise without merit is Phillippe's contention that his tort claims for misrepresentation and interference with business relations are unaffected by the statute of frauds. To some extent these theories are discussed and rejected in Phillippe v. Shapell Industries, supra, 43 Cal.3d 1247, 12691270. There the Supreme Court left open only the possibility of recovery *for* actual fraud. A mere oral promise to execute the required writing at a later date would not suffice, for a broker could not reasonably rely on such a promise. The Court suggested only the possibility of recovery where the client fraudulently prevents the broker from taking steps to have the client sign a commission document by falsely assuring him it has already been signed. Phillippe makes no such claim here.[2] (See also Owens v. Foundation for Ocean Research (1980) 107 Cal.App.3d 179 (where principal fraudulently represents the agreement employing the broker has been reduced to writing and approved by its board of directors,

broker can recover for fraud if he shows reasonable reliance on that representation).)

In support of his tort theories, Phillippe relies on several cases which are all distinguishable because they do not involve real estate brokers, who, as the Court explained in Phillippe v. Shapell Industries, are required to be familiar with the law making unenforceable an unwritten agreement for a brokerage commission. (See Tenzer v. Superscope, Inc. (1985) 39 Cal.3d 18 (plaintiff an unlicensed person seeking a finder's fee); Continental Airlines, Inc. v. McDonnell Douglas Corp. (1989) 216 Cal.App.3d 388, 421 fn. 24 (oral representations in connection with contract for sale of goods); Palmer v. Beverly Enterprises (7th Cir. 1987) 823 F.2d 1105, 1113 (employer's unwritten promise to buy employee's house actionable in fraud if false, applying California law).

Accordingly, the trial court correctly granted summary judgment for defendants.

The judgment is affirmed.

NOT TO BE PUBLISHED.

_____, J.*
KLEIN (Brett)

We Concur:

_____, P.J.
ROTH

_____, J.
FUKUTO

Management Trend Company
Creating Wealth

23501 PARK SORRENTO, SUITE 216 B
CALABASAS PARK, CALIFORNIA 91302
(213) 710-0355

October 19, 1983

Dr. James G. Kallins, M.D.
15747 S. Woodruff
Bellflower, Ca. 90706

RE: FREMONT SQUARE
Ventura Road at Doris Ave.
Oxnard, CA

Dear Dr. Kallins:

It was good chatting with you today concerning Fremont Square Shopping Center in Oxnard, Ca. To review the conversation, the following information may be useful.

The center consists of some 107,000 Square Feet of leased space on more than 10 acres of land. There are more than 900 parking spaces. The center was opened in 1961. There is a good deal of new construction in the area north, south and west of the center. You should take a look at the new subdivision on Doris Ave. a block west of the center. There is another center a few blocks south of Fremont Center which was bought and rehabed in the past few years. This will give you an idea as to what can be done with Fremont to modernize it.

This center is being sold as an Estate Sale and as such will be open to bids. After looking at the center, you can tell us if you want us to pursue a possible purchase for you. If so, we will ask you to send us a check in the amount of $50 to pay for a bid package. The minimum bid is $3,000,000 although the appraisal is for more. The estate will consider bids on terms with a substantial cash down payment. All bids are net to the estate. The buyer will pay the broker a commission of 6% which is added to the bid price as the total purchase consideration. The winning bid as well as the brokerage agreement will then be submitted to the court for confirmation. The bid

package will contain all pertinent data including income, expenses, lease data and a title report.

We feel that the center could work out to be a very good buy for the right buyer due to the following factors: good location in a fast growing community, seasoned fully leased center with low rents, 107,000 sq. ft. of space which may be purchased in the $30 to $35 per sq. ft. range, some 10 acres or more of valuable land which may be purchased at about land value, fast write-off of rehab dollars invested for added tax advantage, upside potential from increased rents as leases roll-over and rehab work is completed over the coming years, and more.

Attached is an area map which will help you locate the center.-

Sincerely yours,

MANAGEMENT TREND COMPANY

David E. Phillippe

President

P.S. It took me only three days after you rejected the Chino center to secure a five page written contract from another buyer. They are one of the leading mortgage bankers in Southern Calif.



October 27, 1983

Management Trend Company
Mr. David E. Phillipe, President
23501 Park Sorrento, Suite 216 B
Calabasas Park, California 91302

Dear Mr. Phillippe:

As per your telephone conversation with Dr. Kallins, enclosed please find a check in the amount of $50.00 to the firm of Ferguson Reguier and Patterson for the package on

Fremont Square Shopping Center
Ventura Rd. at Doris Avenue
Oxnard, California

Your attention to the above matter will be appreciated.

Sincerely,

Virginia Kallins

BEST AVAILABLE COPY

GEOVEST CORPORATION
15747 SO. WOODRUFF, STE. B 925-6491
BELLFLOWER, CALIF. 90706

210

9/27 83 19-21/1290

Pay to the Order of Ferguson Reguri Peterson $50.00

Fifty & no/100 Dollars

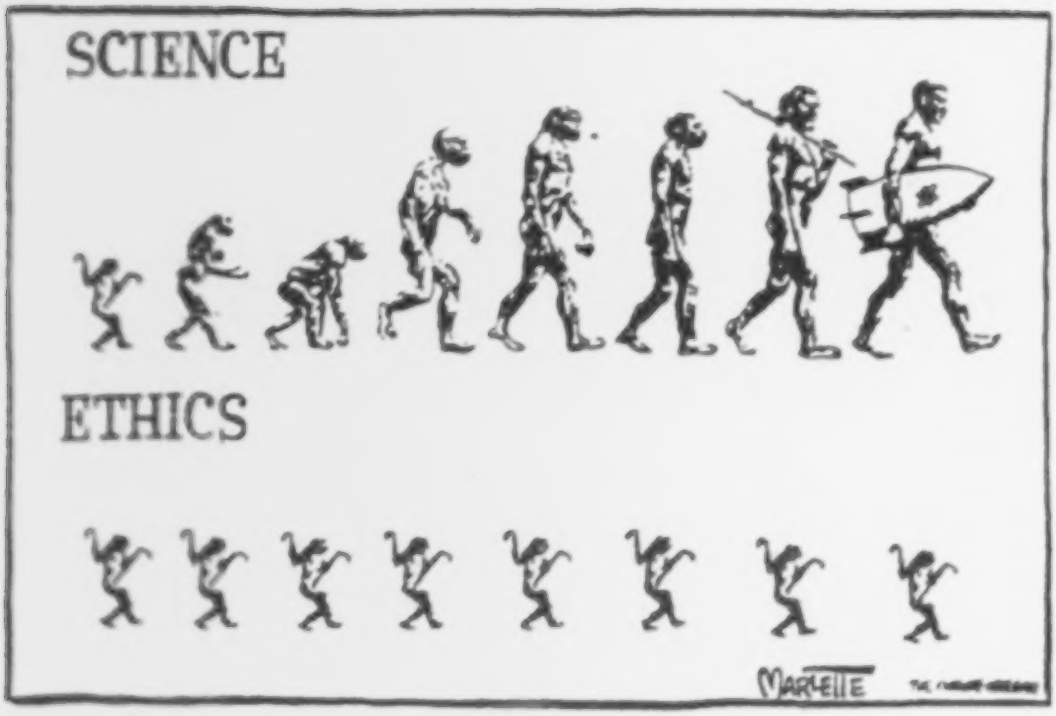
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Barbara Kyllonen

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